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File identification

Archive resolution of the previous information no. IP 362/2018, referring to Santpedor City Council.

Background

1. On 21/12/2018, the Authority received, by referral from the Spanish Data Protection Agency, a letter in which a person filed a complaint against the Santpedor City Council, on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant (Mrs. (...)) explained that from the Santpedor City Council - specifically from the email address (...)-, several emails were sent to him (on dates 08/10/2018 at 14:56 h, 06/11/2018 at 13:27 hi 14 /11/2018 at 8:33 a.m.) in which he was informed about actions related to training and job reinsertion actions. The complainant stated that he did not know where the City Council had obtained his e-mail address and complained that he had never given consent to the City Council for the sending of this type of information.

The complainant added that on 06/11/2018 he sent an email to the City Council to *"delete my files"*, but that he received another email from the City Council regarding another training course (it is inferred that it would be the mail sent by the City Council on 14/11/2018, at 8:33 a.m.). The person making the complaint explained that he contacted the City Council again *"so that they send me the definitive cancellation of the service in writing and thus notify me via another email."*

2. The Authority opened a preliminary information phase (no. IP 362/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 15/01/2019, the complainant was requested to provide a copy of the emails, received and sent, to which he referred in his complaint.

4. On 01/25/2019, the complainant sent the following documentation:

- The e-mails sent to him by the Local Employment Service (SLO) of the City Council of Santpedor on 08/10/2018, 06/11/2018, referring to two courses.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

- The letter sent by the complainant to the City Council's SLO on 06/11/2018, through which he requests that you "*delete me from all databases*".
- The email sent by the SLO of the Santpedor City Council on 11/14/2018, regarding training actions.
- The email sent by the complainant to the City Council's SLO on 11/14/2018, reiterating that they "*delete my data*".
- The email sent by the City Council's SLO on 11/15/2018, through which the reported that his file had been closed.

5. On 08/02/2019, the reported entity was required to inform, among others, how it obtained the address of the reporting person to whom it addressed the emails subject to the report; if there was the consent of the reporting person to use their email address for the purpose of sending information about training activities and job reinsertion; or, in order to indicate what would be the legal basis that would enable the sending of information about training activities to the person making the complaint.

6. On 02/19/2019, the entity responded to the aforementioned request through a letter in which it stated the following:

- That the complainant registered with the Local Employment Service (SLO) of Sant Salvador de Guardiola on 11/12/2014.
- That subsequently, on 25/10/2016, he signed the request to transfer the entire file to Santpedor SLO service.
- That registration for the service is carried out through a personal interview in which different data are requested, including the email data, which are incorporated into a form designed by Xaloc (Diputació de Barcelona).
- That the entity provides a generic model because that of the person making the complaint was destroyed at the time they requested the termination.
- That "*consent is derived from your registration in the service, to the extent that you are informed that your data is included in the Xaloc file to manage employment mediation between the applicant and the hiring company and that your data may be transferred to other employment services of the public administrations, with information on their rights of access, rectification, cancellation and opposition*".
- That the reporting person sent an e-mail requesting cancellation on 11/14/18. And that the person in charge of the employment service terminated her the very next day and thus notified her and Xaloc, as the owner of the file, to delete all her data from the Service.

The reported entity attached various documentation to the letter.

Fundamentals of law

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1.- About the collection of data.

From the letter of complaint presented to this Authority, it appears that the person making the complaint was complaining about the fact that the Santpedor City Council had obtained their email address, without their consent, in order to send them relevant information to training and job reinsertion actions. And, in relation to the rest of the data dealt with by the SLO de Santpedor, the complainant also questioned whether the consent he initially gave to the Santpedor City Council when he was registered with the SLO de Santpedor, had been adequate to Regulation Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD).

First of all, it is necessary to point out that the email address is considered personal data. In this sense, article 4.1 of the RGPD defines personal data as *"all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person."*

Having said that, the sending of e-mails to the e-mail address of the person reporting here, would constitute a processing of personal data, understood as *"any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction"* (art. 4.2 RGPD).

For its part, article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, loyal and transparent in relation to the interested party. In relation to the principle of legality of the treatment, article 6.1 of the RGPD includes the legal bases that allow a treatment to be considered lawful, among which, it contemplates the consent of the affected person (art. 6.1.a RGPD) or that the processing is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the data controller (art. 6.1 e RGPD).

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

With respect to this last legal basis for the treatment (art. 6.1.e RGPD), article 6.3 of the RGPD provides that it must be established in the law of the European Union or by the law of the Member States that applies to treatment, a requirement that, in the case of the Spanish State, must be understood as referring to a standard with the status of law (Article 53 of the Spanish Constitution).

Given the above, it is necessary to determine whether the City Council would be empowered by a rule with legal rank to carry out the treatment that is the subject of the complaint.

Well, Law 7/1985, of April 2, regulating the bases of the local regime provides that municipalities can promote all kinds of activities and provide all those public services that contribute to meeting the needs and aspirations of their neighborhood (art. 25.1).

In turn, Legislative Decree 2/2003, of April 28, which approves the revised text of the Law municipal and local regime of Catalonia, establishes that municipalities can carry out activities complementary to those of other public administrations and, in particular, those relating to employment and the fight against unemployment (art. 71.1.g).

In relation to this matter, Law 13/2015, of 9 July, on the organization of the employment system and the Public Employment Service of Catalonia (hereafter, Law 13/2015), defines the employment system as *"the set of entities, services and programs necessary to promote and develop public employment policy and to guarantee quality occupational services to the people and companies of Catalonia within a global economic development strategy, oriented to the achievement of the objective of full employment and social welfare"* (art.

12). Likewise, in said rule it is indicated that among the entities that are part of it are local administrations (art. 14), and that among the objectives of the employment system is that of *"Fostering economic development and job creation at the local level and detect support needs; promote the specialized attention of the different groups and the personalized attention of each user, and guarantee the coordinated participation of all the agents who intervene in the field of specialized labor insertion services"* (article 13.f).

This same law also provides that the *"management of placement in the labor market is a public service, in accordance with article 20.3 of State Law 56/2003, of December 16, of employment, which aims to manage the job offers presented by companies, entities and people who offer employment, in order to provide them with candidates among the people in demand for employment registered in the Service Public Employment of Catalonia"*, corresponding to this management of the Public Employment Service or of other entities that collaborate with it, as is the case of the Local Employment Service of this City Council. Specifically, with regard to occupational services, sections 1 and 6 of article 16 of Law 13/2015, regarding occupational services, establish the following:

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

"1. Occupational services are the set of public services and programs that make up Catalonia's employment policies, and cover, among others, the following areas, without prejudice to their interrelationship:

- a) Professional guidance.*
- b) The management of placement in the labor market.*
- c) The professional qualification.*
- d) The promotion of employment.*
- e) Attention to companies.*
- f) The promotion of job creation and local economic development and the promotion of recruitment.*

g) The promotion of entrepreneurship and self-employment.

h) The promotion of geographical mobility. (...)

6. The professional qualification includes both services and professional training programs for employment as well as skills accreditation:

a) Vocational training for employment, which has a direct link with the catalog of professional qualifications, is the set of training actions that allow the acquisition of knowledge and skills throughout working life, responding to the needs of people and companies and contributing to the development of the knowledge-based economy. (...)"

Therefore, in accordance with the rules with legal status mentioned above, the treatment for the purpose related to the provision of the service of support and advice to obtain a job for citizens can be considered necessary for the fulfillment of a mission in the public interest in accordance with article 6.1.e) of the RGPD.

Therefore, the processing of the reporting person's data for these purposes is lawful processing.

Having established the above, the Santpedor City Council claims that on 11/12/2014 it collected directly from the person here denouncing, among others, the data relating to his email address when he registered in the SLO.

However, the fact that the City Council, following the request of the person reporting here, delete your data, it has prevented you from being able to verify which data the reported entity collected when the reporting person registered with the SLO. That is why it has not been possible to accredit the commission of an eventual infringement on this end by the City Council.

2.2.- About the right to information in the collection of data.

On the other hand, Santpedor City Council has also not certified what information was provided to the affected person about the processing of their data at the time of collection.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

The possible breach of the right to information could constitute the minor infringement provided for in article 44.2.d) of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), the rule in force at the time of the facts considering that these would have been consummated on 11/12/2014 (date on which the data was collected and when it should have been reported). Nevertheless, and given the time that has passed, it is necessary to address whether the hypothetical minor infraction indicated would be time-barred. In this regard, article 47 of the LOPD established the following:

"1. Very serious infringements expire after three years, serious ones after two years and minor ones after one year. 2. The limitation period begins to count from the day on which the offense was committed."

The limitation period applicable to the present case would therefore be one year, as it is a minor infraction, and the calculation of this period began on the day on which the alleged infraction would have been committed. As things stand, the eventual infringement would have expired on 12/10/2015. That is to say, it would already have been time-barred long before the date on which the letter of complaint was received by the Authority. The statute of limitations for the offense leads to the termination of the responsibility that could be derived from the eventual infringing conduct, which in turn would prevent the initiation of the corresponding sanctioning procedure, as no action could be taken to prosecute the alleged offense .

2.3.- About sending emails.

The City Council asserts that the affected person was informed, during the collection of their data, that the purpose of the processing of their personal data was *"to manage the employment mediation between the job applicant and the contracting company"*. Therefore, it acknowledges that the affected person was not informed during the collection of their data that one of the purposes would be the sending of information on courses for the unemployed via email

That is why it is necessary to analyze whether the sending of course information to the unemployed, once the data of the affected person had been collected, would be compatible with the purpose for which the reporting person registered to the active job search service for unemployed people. In particular, it is proven that Santpedor City Council used the data relating to the affected person's email address for sending emails on 10/08/2018.

In this sense, it is necessary to refer to article 5.1.b) of the RGPD (rule in force on 08/10/2018), which regulates the principle of purpose limitation in the following sense:

*"1. The personal data will be (...):
b) collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the further processing of personal data for archiving purposes"*

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

in the public interest, scientific and historical research purposes or statistical purposes no will be considered incompatible with the initial purposes ("limitation of the purpose").

This provision must be supplemented with the provisions of article 6.4 of the RGPD, and specifically, with the provisions of letters a), b) and d):

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a Society democratic to safeguard the objectives indicated in article 23, section 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among others

things:

a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided; b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;

c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;

d) the possible consequences for the interested parties of the planned subsequent treatment;

e) the existence of adequate guarantees, which may include encryption or pseudonymization.

In this regard, it should be borne in mind that the person now reporting provided his personal data when he registered with the SLO of the Santpedor City Council, which offered support and advice to get a job. For its part, it should be noted that the e-mail messages sent by Santpedor City Council to the complainant were directly related to the aforementioned purpose. Indeed, it is necessary to consider that professional training for employment has a direct link in the set of training actions that allow the acquisition of knowledge and skills throughout working life.

This is why it is considered that the processing consisting of the sending of the e-mails was a processing compatible with the purpose for which the personal data were initially collected.

2.4.- About the information regarding the treatment for another purpose.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

In the present case, it is proven that on 08/10/2018 the Santpedor City Council used the complainant's email address to send him an email about courses for the unemployed. There is no evidence, however, that the City Council had previously used this email address.

Article 13.3 of the RGPD (in force on the date on which said message was sent and other subsequent ones) regulates that if the person in charge of the treatment plans to process the personal data in the future for a purpose other than that which motivated the collection, before further processing must provide the interested party with information about this other purpose and any additional relevant information, in accordance with article 13.2 of the RGPD.

Therefore, even if the sending of emails can be considered a compatible purpose, it was necessary to inform the affected person about the new purpose, an end which the City Council has not accredited.

This eventual non-compliance would constitute the infringement provided for in article 83.5.a), in relation to article 13.2, both of the RGPD.

At this point, it should be noted that at the time the said email message was sent (10/08/2018), the infringing rates provided for in the LOPD had been repealed by Royal Decree-Law 5/2018, of 27 July, of urgent measures for the adaptation of Spanish law to the regulations of the European Union in the matter of data protection (RDL 5/2018). And, in accordance with article 5.1 of RDL 5/2018, the infringements provided for in article 83.5.a) of the RGPD prescribed at 3 years.

At this point, it should be borne in mind that the LOPD and RDL 5/2018 have been repealed by Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD). And also that article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time the events occurred, unless the subsequent modification of these provisions favor the alleged infringer.

This is why, although the provision in force at the time the events occurred was RDL 5/2018 which contemplated that the infringement provided for in article 83.5.a) prescribed within the 3-year limitation period, it is necessary apply the limitation periods established in the LOPDGDD, since they favor the City Council.

In this sense, in accordance with the LOPDGDD, the conduct analyzed here has been collected as a minor offense in article 74.a):

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

For its part, article 74 of the LOPDGDD also establishes that the statute of limitations for minor offenses is one year.

As things stand, said infringement would also be time-barred (specifically, it barred on 07/10/2019).

2.5.- About the deletion.

The complainant stated that he sent an email message on 06/11/2018 requesting that you "*immediately delete me from all databases (...)*". This deletion request was reiterated by the person on 14/11/2018.

In view of this request, the City Council responded to the complainant by email dated 11/15/2018, informing her that it had deleted her data, and giving the cancellation of the active job search service .

Therefore, the City Council attended to the exercise of the right of deletion provided for in article 17 of the RGPD, within a period of one month from the receipt of the request, as required by the art. 12.3 of the GDPR.

3. In accordance with everything that has been set out in the 2nd legal basis, it is appropriate to agree on the archive of the present previous actions.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 362/2018, relating to Santpedor Town Council.
2. Notify this resolution to Santpedor City Council and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months of

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

count from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,

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